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12 Attorneys for Defendants  
13 PETALUMA LIVESTOCK AUCTION YARD  
13 and MANUEL A. BRAZIL

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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 CALIFORNIA SPORTFISHING  
18 PROTECTION ALLIANCE, a non-profit  
18 corporation,

19 Plaintiff,

20 vs.

21 PETALUMA LIVESTOCK AUCTION  
22 YARD, INC., a California corporation, and  
22 MANUEL A. BRAZIL, an individual,

23 Defendants,

Case No: C-06 6725 CW

ORDER GRANTING

STIPULATION FOR EARLY  
DISCOVERY

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387; F.R.C.P. 29)

25 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter  
26 “CSPA” or “Plaintiff”), a non-profit corporation dedicated to the protection, enhancement  
27 and restoration of the wetlands, rivers, creeks and tributaries of the San Francisco Bay and its  
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1 tributaries and other waters in the State of California;

2 **WHEREAS**, Defendant Petaluma Livestock Auction Yard is a corporation organized  
3 under the laws of the State of California;

4 **WHEREAS**, Defendant Manuel A. Brazil is an individual;

5 **WHEREAS**, Defendants Petaluma Livestock Auction Yard and Manuel A. Brazil  
6 (collectively “Defendants”) own and operate a livestock auction yard (hereinafter “Livestock  
7 Auction Yard”), with additional services of animal feed and storage, animal waste collection  
8 and storage, vehicle storage and maintenance, and storage of dead animals;

9 **WHEREAS**, on or about August 26, 2006, CSPA served Defendants, the United  
10 States Attorney General, the national and Region IX offices of the United States  
11 Environmental Protection Agency, the State Water Resources Control Board (“State Board”)  
12 and the Regional Water Quality Control Board – San Francisco Bay Region (“Regional  
13 Board”) with a Notice of Violation and Intent to File Suit (“60-Day Notice”) under Sections  
14 505(a)(1) and (f) of the Federal Water Pollution Control Act (the “Act” or “Clean Water  
15 Act”), 33 U.S.C. § 1365(a)(1) and (f);

16 **WHEREAS**, on October 30, 2006, CSPA filed a complaint against Defendants in the  
17 United States District Court for the Northern District of California, entitled *California*  
18 *Sportfishing Protection Alliance v. Petaluma Livestock Auction Yard, Inc. and Manual A.*  
19 *Brazil*. (Case No. C 06 6725 CW) (hereinafter “Complaint” or “Action”), wherein CSPA  
20 alleged various ongoing violations of the Clean Water Act;

21 **WHEREAS**, the Complaint alleges that Defendants discharge storm water from the  
22 Livestock Auction Yard in violation of State Water Resources Control Board Water Quality  
23 Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit  
24 No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated  
25 with Industrial Activities Excluding Construction Activities (hereinafter, the “General  
26 Permit”);

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1       **WHEREAS**, among other prohibitions and requirements, the General Permit requires  
2 facilities subject to its requirements to implement a monitoring and reporting program to  
3 assess discharges during the “wet season,” from October 1 through May 30 of each year;

4       **WHEREAS**, on November 21, 2006, Defendants answered the Complaint and denied  
5 that Defendants are subject to the requirements of the General Permit;

6       **WHEREAS**, the Court issued its “Order Setting Initial Case Management Conference  
7 and ADR Deadlines” on October 30, 2006, which set January 12, 2007 as the last day for the  
8 parties to meet and confer in compliance with Federal Rule of Civil Procedure (“F.R.C.P.”)  
9 Rule 26(f) to develop a discovery plan and discuss the case;

10       **WHEREAS**, certain discovery requests prior to the Rule 26(f) conference may be  
11 allowed where the need for discovery outweighs prejudice to the party on whom the demand  
12 is made (*Semitool, Inc. v. Tokyo Electronic Ass'n*, 208 F.R.D. 273, 276 (N.D. Cal. 2002)) and  
13 whereas good cause may exist where physical evidence may be consumed or destroyed  
14 before discovery may take place according to the schedule set forth in Rule 26;

15       **WHEREAS**, CSPA believes that good cause exists for it to propound a Request for  
16 Inspection of Property pursuant to F.R.C.P. 34 to inspect Defendant's property located at 84  
17 Corona Road, Petaluma, California, during a rain event prior to the parties' Rule 26(f)  
18 conference because CSPA believes that evidence of Defendants' violations of the Act (e.g.,  
19 storm water discharges from the site to the two adjacent creeks that bound the property in  
20 question) is being destroyed during each rain event at the property;

21       **WHEREAS**, if CSPA must wait to propound its inspection request until after the  
22 Rule 26(f) conference and exchange of initial disclosures, CSPA's opportunities to inspect  
23 the site during a rain event will be greatly diminished;

24       **WHEREAS**, on November 30, 2006, counsel for CSPA informed counsel for  
25 Defendants of CSPA's position and suggested that the parties agree to stipulate that CSPA  
26 may inspect the property during a rain event prior to the parties' Rule 26(f) conference and  
27

1 exchange of initial disclosures pursuant to the following terms:

- 2 (1) counsel for CSPA will monitor weather forecasts for upcoming rain events;
- 3 (2) upon learning of a likely rain event at the Auction Yard, counsel for CSPA will
- 4 provide counsel for Defendants with preliminary notice of CSPA's intent to
- 5 conduct the wet weather site inspection at least 36 hours prior to the time the
- 6 inspection will begin (9:00 a.m.);
- 7 (3) counsel for CSPA will confirm or cancel the preliminarily noticed inspection
- 8 by not later than 10:00 p.m. the evening prior to the inspection by leaving a
- 9 message for counsel at their office telephone or any other prearranged
- 10 telephone number;
- 11 (4) CSPA will send at most three representatives, including its expert and counsel,
- 12 to conduct the site inspection;
- 13 (5) CSPA's representatives will be accompanied by Defendants' representatives
- 14 during the entire inspection;
- 15 (6) CSPA will be permitted to inspect, photograph, test, videotape or sample from
- 16 the following areas at the Auction Yard:
  - 17 (a) any areas or equipment from which liquids or runoff may drain or be
  - 18 drained or discharged;
  - 19 (b) all storm drains or other conveyances of storm water to and from the
  - 20 property;
  - 21 (c) all berms and other structural management practices intended to control
  - 22 water flows on the property;
  - 23 (d) all entrances and exits;
  - 24 (e) all storm water pollution management measures; and
  - 25 (f) all areas that may be subject to potential spills of materials or other
  - 26 potential pollutants that may contaminate storm water.

- (7) Results of analysis of samples taken by CSPA will be shared with Defendants;
- (8) CSPA will make every effort to provide notices earlier than the above deadlines; and
- (9) CSPA will indemnify Defendants, and hold them harmless for any property damage inflicted to the Auction Yard or personal injury suffered by anyone as a direct result of actions by CSPA's representatives present at the inspection, except to the extent such property damage or personal injury was caused by the negligence of Defendants or their representatives;

**WHEREAS**, the parties stipulate pursuant to F.R.C.P. 29 that CSPA's Request for Inspection of Property attached hereto as Exhibit A shall be deemed served on the Defendants upon entry of this order.

Dated: 12/15/06

**LAW OFFICES OF ANDREW L. PACKARD**

By:

**Andrew L. Packard  
Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE**

Dated: 12/14/06

**LAW OFFICE OF POLLOCK & JAMES**

By:

Mark S. Penlock  
Attorneys for Defendants  
PETALUMA LIVESTOCK AUCTION YARD and  
MANUEL A. BRAZIL

~~PROPOSED~~ ORDER

Good cause appearing, and the parties having stipulated and agreed,

**IT IS HEREBY ORDERED** that Plaintiff California Sportfishing Protection

Alliance's Request for Inspection of Property attached hereto as Exhibit A is deemed served, upon entry of this order, on Defendants Petaluma Livestock Auction Yard and Manuel A. Brazil.

12/22/06

Dated: \_\_\_\_\_

Chadie with

Hon. Claudia A. Wilkens  
United States District Court Judge  
Northern District of California

**EXHIBIT A**

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10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE  
12  
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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 CALIFORNIA SPORTFISHING  
17 PROTECTION ALLIANCE, a non-profit  
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22 YARD, INC., a California corporation, and  
23 MANUEL A. BRAZIL, an individual,

24 Defendants.

25 Case No. C 06 6725 CW

26 PLAINTIFF'S FIRST REQUEST FOR  
27 INSPECTIONS OF LAND AND  
28 PROPERTY PURSUANT TO FEDERAL  
RULE OF CIVIL PROCEDURE 34

29 To: Defendants Petaluma Livestock Auction Yard, Inc., Manuel A. Brazil, and counsel  
30  
31 Mark S. Pollack:

32 You are requested pursuant to Rule 34(a) of the Federal Rules of Civil Procedure to  
33 permit Plaintiff California Sportfishing Protection Alliance ("CSPA") to enter your  
34 property and facility located at 84 N. Corona Road, Petaluma, California during one rain  
35 event during the Wet Season (as defined in the General Industrial Storm Water Permit)  
36 commencing October 1, 2006 and continuing through May 31, 2007) to inspect,  
37 photograph, test, videotape, or sample the following areas of such facility: (1) any areas or  
38 equipment from which liquids or runoff may drain or be drained or discharged; (2) all

1 storm drains or other conveyances of storm water to and from the property; (3) all berms  
2 and other structural management practices intended to control water flows on the property;  
3 (4) all entrances and exits; (5) all storm water pollution management measures; and (6) all  
4 areas that may be subject to potential spills of materials or other potential pollutants that  
5 may contaminate storm water.

6 It is further requested that the dates for making such entry be determined through  
7 the following procedure. Based on available weather forecasts, counsel for CSPA shall  
8 provide to Defendants' counsel preliminary notice of CSPA's intent to conduct a wet  
9 weather site inspection at least 36 hours prior to the time the inspection will begin (9:00  
10 a.m.). CSPA shall confirm or cancel the preliminarily noticed inspection by not later than  
11 10:00 p.m. the evening prior to the inspection by leaving a message for counsel at their  
12 office telephone or any other prearranged telephone number. CSPA will make every effort  
13 to provide notices earlier than the above deadlines.  
14

15 Duly noticed and confirmed site inspections shall begin not later than 9:00 a.m.  
16 The parties may mutually agree to adjust the start time of any specific site inspection.  
17

18 As previously agreed by the parties, CSPA will send at most three representatives to  
19 conduct the site inspection. CSPA further agrees to indemnify Defendants for physical  
20 injury to the property caused by CSPA representatives during the site inspection.  
21

22 This request for site inspections is in addition to any other site inspections requested  
23 by CSPA or agreed upon by the parties. Service of a written response to this request is due  
24 from you within 30 days of the date of service of this request. Your response must state  
25 that production and related activities will be permitted as requested or that the requested  
26 production is objected to, in which event the reasons for your objection must be stated.  
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Dated: 12/15/06

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LAW OFFICES OF ANDREW L. PACKARD

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By:

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Andrew L. Packard  
Attorneys for Plaintiff  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE

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